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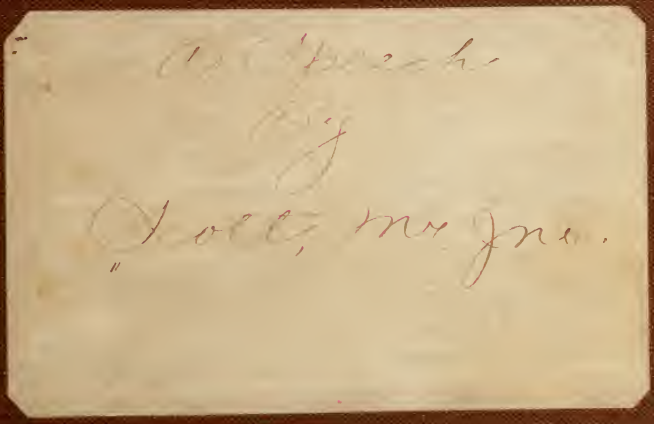

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MR. SCOTT'S SPEECH

ON

THE MISSOURI QUESTION,

IN THE

House of Representatives of the United States.

WASHINGTON:

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1820.

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THE Question before the Committee of the whole House was, on agreeing to the following amendment to the Bill, authorizing the people of Missouri Territory to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States:

"And shall ordain and establish, that there shall be neither slavery nor involuntary servitude in said State, otherwise than in the punishment of crimes whereof the party shall have been duly convicted. *Provided always*, That any person escaping into the same, from whom labour or service is lawfully claimed in any other State, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour, or service, as aforesaid. *And provided also*, That the said provision shall not be construed to alter the condition, or civil rights, of any person now held to service or labour in the said Territory."

Mr. SCOTT'S SPEECH.

Mr. SCOTT said—it had been erroneously stated, that Missouri *demanded* that which she ought more modestly to sue for as a matter of special grace and favour. In the remarks which he should now have the honour to submit on the subject, he did not wish to be again misunderstod by the honourable gentleman from New-York, (Mr. Taylor,) or any other quarter. Mr. Scott did not sound the tocsin of alarm—he did not beat up for volunteers in rebellion against the constituted authorities of his country—but he should degrade, counteract, and even *misrepresent*, the wishes of the people of Missouri, was he to press their claim for admission into the Union, by obsequious supplications, and prayers suited alone to the taste and palates of sycophants, or of tyrants. Sir, said Mr. Scott, Missouri asks, in the true American character of moderation and firmness, your assistance to organize her State Government, as preparatory to her admission into the Union. She did not sink herself beneath notice, by an affectation of inferiority, meekness, dependence, and submission, which she did not feel, nor did she by any rash declarations, or warlike attitudes, authorize the ungenerous insinuations, that there was in that people a moral unfitness for self-government. There had been no exhibition of such a spirit of boisterous domination, as ought to induce you to shun their company, or to avoid associating with them as a member of the federal family. Missouri presented herself with the Constitution of the United States in one hand, and the treaty of cession in the other, and asked admission into the Union. She exhibited as preliminaries, a long apprenticeship under the guardianship of your laws; a moral capacity and fitness in the people for self-government; a devoted attachment to the Constitution and laws of the land; a firm and fixed republican character; and numbers sufficient to entitle her to two representatives. She did not attempt to deceive Congress in reference to her territory, or the number of her inhabitants; she presented an actual map of the surveys of the country, by which a calculation might be made within a few miles of the exact extent of her boundaries; she produced documents in support of her population, sufficient to satisfy the most conscientious and scrupulous; she was not driven to the subterfuge of counting her citizens and travellers in every county through which they might pass to make out her pretensions to ad-

mission, and then to take off the odium of this deception, to christen the transaction with the name of pious fraud, because the great object in view was to jump into the Union, and obtain the blessed privilege of dictating to her superiors, and her neighbours. Mr. Scott, regretted, that this question had produced so much excitement; he, however, disclaimed the responsibility of ultimate measures, because he was acting only on the defensive, and was not one of the proposers or supporters of the proposition that had caused it. If it was of recent date he would entertain some hopes of its short duration. But, for more than one year this question had agitated many sections of this government; it had mixed and mingled with every topic; it had operated on, and even controlled elections. He had seen one instance of its powerful influence in an adjoining State, and he feared similar sacrifices had, or would be made in other quarters, of honourable men, for their integrity and attachment to the principles of the Constitution.

Mr. Scott said, that both the advocates for, and those opposed to, this restriction, who had preceded him, had divided the subject into three heads: the first resting on the Constitution; the second on the the treaty of session; and the third on the expediency of the measure. There were other grounds, growing out of the relations of the United States, and the Territory of Missouri, that he considered as not only connected with, but conclusive on the subject, and which he would hereafter examine; he would however first advert to the nature of this proposition, which gentlemen had contended they had the right to make. Some had dignified it with the name of treaty—some with the name of compact, while others had contended for the broader ground—that you have the power to restrict Missouri in virtue of your sovereignty over the Territory. On all occasions it was of the first importance to understand the question, but more particularly so, where it involved the principles of the Constitution, or the rights of the people. It was then either matter of *treaty*, or *compact*, between Congress and Missouri, or it was an *ordinary act of legislation*.

Mr. Scott contended, that if Congress had the right to impose this restriction, as an ordinary act of legislation by virture of their sovereignty over the Territory, that then they could not support the ground that it was either a treaty or a compact with Missouri. Vattel, in his law of nations page 192, section 154, laid it down as a fixed principle, "that public treaties can only be made by *superior powers*, by sovereigns who contract in the name of the state." It was of the first importance in every state, that it should be well understood where the power of making treaties resided. It was important to the state itself, and doubly so as related to foreign governments with whom you are to treat. Vattel page 193, section 154, said, "it is from the *fundamental*

laws of each state, that we must learn, where resides the authority that is capable of contracting with validity in the name of the state." By the Constitution, which is the *fundamental law* of the United States, in article second, section second, the power to make treaties was given to the President of the United States and the Senate, and that disposition of this branch of the supreme power by the people, had the unequivocal effect of devesting the House of Representatives of this power: not only the House of Representatives was deprived of the exercise of this power, but the two Houses of Congress, were they of one accord, had not the power to propose or make a treaty; and the case in favour of his argument was infinitely stronger, when it was considered, that the Senate, who by the Constitution was a component part of the treaty making power, was, as to the question under discussion, actually opposed to its success. Had the Constitution stopped here it would have been sufficient for all the purposes of the argument. The 10th section of the 1st article, had in express terms, inhibited a *State* from "entering into any treaty, alliance, or confederation." Was even a *State* to make a treaty, it would, upon principles that are recognised in Vattel, page 195, sect. 161, "be void for want of sufficient power to make it." And yet a State, had a *constitution* or *fundamental law*. How would the argument bear gentlemen out, when it was applied to a mere Territory not absolutely sovereign, within its own lines, and, that had not any *constitution* or *fundamental law*. If Missouri had the right to treat with Congress, it must be in pursuance of her sovereignty; and that same sovereignty would give her the equal right to treat with any other power, and which if she was to attempt to do, he had little doubt gentlemen would then, if not before, deny her power to accomplish. He thought it was sufficiently elucidated, that both Houses of Congress, much less the House of Representatives had not the power, in shape of a treaty, that a *State* had not the power, and that a Territory, possessing even less sovereignty than a State, had it not.

Mr. Scott said, that the next ground gentlemen had relied on was, that this restriction might be imposed on Missouri, by way of *compact* Vattel page 192, section 152, laid it down "that treaty, and compact are synonymous terms, where perpetuity is the object." This restriction was to be fixed, unalterable, eternal—no change of time, circumstances, or condition, was to place it in the power of the people of Missouri, to alter this feature in their Constitution. He defined a *compact* to be an agreement, or contract to do, or not to do, a particular thing. Again, agreements were either voluntary, or involuntary: if involuntary, (as this would be in reference to the people of Missouri) it was competent for the party to avoid it as early as possible. If voluntary, and had for its object *that which the parties might lawfully do*, it

was binding—the acquisition of power by Congress, by way of compact, or treaty beyond what the people have given them *was not a lawful object;* if it were, Congress might progress in exacting from States a surrender of powers until they had accumulated sufficient strength to swallow up the whole. And was any one State disposed to make a surrender of any portion of its powers, or sovereignty, to the general government? He doubted very much whether, from the evil tendency and dangerous example it would furnish, the other States would stand by and see it done. Mr. Scott would put the question to gentlemen, whether Congress could, by treaty, compact, or law *surrender* any of the powers given by the Constitution for the benefit of the whole?—Congress were but the bankers of the people, to the amount of power deposited, and the fund could only be distributed in the shape of laws, when the necessities of their country, or the good of the people required. The deposite was so sacred that Congress could not agree to diminish it in any way that should counteract the purposes for which it was given. Congress could not agree to relinquish the right to impose taxes on any particular State; or the right to regulate commerce in reference to any one, or all the States; or give any preference to the ports of one State, over those of any other State; or to give to one State more exemptions or a greater representation than her federal condition entitled her to. If Congress could not give powers to a State, she could not take privileges away. In fact, Congress could not relinquish its sovereignty on any of the objects over which it is made sovereign by the Constitution. By a parity of reasoning a *State* could not surrender by compact, any portion of the sovereignty retained to it by the Constitution, or which it possessed by virtue of inherent rights; but if a State could relinquish any portion of its sovereignty, it must first be considered independent to enable it to do so, and not be in a condition of territorial dependence. State rights were as fully secured by the Constitution as the rights of Congress, or of the general government, the law of nations and of nature operated alike on the general and State governments. Vattel, in page 6, section 18, says, that "a state or nation is obliged to preserve itself, and has a right to every thing necessary for its preservation." The sovereignty of a State was necessary for its happiness and preservation, and could not lawfully be diminished by any compact. By Vattel, page 10, section 31, "the consequences of a good or bad Constitution being of such importance, and the nation being strictly obliged to procure, as far as possible, the best and most convenient one, *it has a right to every thing necessary to enable it to fulfil this obligation.* It is, then, manifest, that a nation has an indisputable right to form, maintain, and perfect its Constitution; to regulate, at pleasure, every thing relating to its government; and that no person can have a

just right to hinder it. Government is only established for the sake of the nation, with a view to its safety and happiness." A *State* was as much bound by the Constitution and the law of nature to preserve its integrity and sovereignty, in reference to the State, as Congress were, by the same Constitution and law of nature, to preserve the integrity and sovereignty of the nation. An acquisition or surrender of powers and sovereignty, by either the general or a State government beyond what the Constitution, the law of nations, and the law of man, had pointed out would be unlawful, and consequently void.

The confederation of the several States, was, in fact, nothing more or less, than an alliance, offensive and defensive; each State was an ally in regard to all the other States. Missouri proposed to become one of the allies in the confederation; but she did not intend to contract an unequal alliance that amounted to a diminution of her sovereignty; nor could she constitutionally do so if she would. Gentlemen had said, that this proposition, if acceded to by Missouri, did not amount to a diminution of her sovereignty; and that, therefore, she might lawfully make the compact, and Congress might lawfully exact it. Sovereignty in the United States was something more than a mere name: it was an *actual condition* of a State. Vattel, page 2d, section 4, said—"any nation that governs itself, under what form soever, without dependence on any foreign power, is a *sovereign state;* its rights are naturally the same as those of any other state." Mr. Scott was well apprized that the law of nations (Vattel, page 2d, section 5,) recognised in certain cases, as "sovereign states those which had united themselves to another more powerful, by an unequal alliance, in which to the more powerful is given more honour—to the weaker more assistance." This was precisely the case in question—to the general government was given more honour, and even more strength—to the state of Missouri more protection and assistance. A most extravagant doctrine had been advanced by gentlemen, that Congress had the right to exact by compact any thing, and assent to any condition, provided the State was left in possession of sufficient sovereignty to enable it to regulate its own municipal concerns; and that as the State of Missouri could exist as a State, shorn of this attribute of sovereignty, that, therefore, she might, by compact, surrender it to Congress. Mr. Scott denied the soundness, even in theory, of this proposition—but, in practice, it was of the most dangerous tendency; a State must be always regarded as an inferior ally in reference to all the other States in the confederacy. The argument that gentlemen drew from the power Congress had to exact tribute, by way of taxes from the States, went but very little to support the proposition, that Congress had the power to compact for any portion of the sovereignty of a State. The payment of tribute, or taxes, was no evidence of the dimi-

nution of the sovereignty of a State; that was a matter to which a State might consent and still retain all its essential independence. Vattel, page 2d, section 7, said—"For though the payment of tribute to a foreign power does, in some degree, diminish the dignity of those States from its being a confession of their weakness, yet it suffers their sovereignty to subsist entire." And, in page 2, section 6—"that a weak state might, in order to provide for its safety, place itself under the protection of a more powerful one, and, in return, agree to perform several offices equivalent to that protection, without devesting itself of the right of government and sovereignty." The conditions of these alliances might be infinitely varied; but Vattel, page 2d, section 5, had shown "that whatever they are, provided the inferior ally reserved to itself the sovereignty, or the right of governing its own body, it ought to be considered as an independent state." Gentlemen, however, still unconverted to the great and essential truth in relation to States, that they cannot, by treaty or compact, constitutionally, surrender any portion of their sovereignty, had, with an air of triumph, asked, where was the line to which they might go without intrenching on the independence and sovereignty of the State? Mr. Scott would answer, from the laws of nations, Vattel, page 202, section 175, declared, that "the sovereignty subsists entire and unimpaired when none of its *constituent rights* are transferred to the superior ally; or rendered, as to the exertion of them, dependent on his will. But the sovereignty is impaired when *any of its rights* are ceded to an ally, or even if the use of them be merely rendered dependent on the will of that ally." The connexion of master and servant was a *domestic relation*—the intercourse between them was, in all the States, matter of municipal law, it had been always considered as depending on the constitutions and laws of the several States, and not the subject of foreign control. The relations existed in other States, were controlled by their own institutions, without congressional interference; it was their constitutional, nay, one of *their constituent rights*, to regulate this connexion. Congress, in this particular, were making an effort to prohibit the existence of this relation in Missouri; they were exerting themselves to render the exercise of this sovereign, constitutional, and constituent right, dependent on their will; and yet gentlemen argue, that this is not a *compact* that will diminish the sovereignty of Missouri.

Mr. Scott was aware that there were cases of absolute necessity, and then it was not to be imputed as a crime (Vattel, page 303, sect. 176,) under the pressure of which "a State would have a right to place herself in absolute subjection, and renounce her sovereignty if she found such measures necessary for her preservation—by a much stronger reason, she has a right, under the same necessity to abandon her allies—

But a generous people will *exhaust every resource* before they submit to terms so severe and humiliating." The consequence of acting in conformity to this necessity would be, "that all former engagements would fall to the ground, together with the power that had concluded them." (Vattel, 202—3, sect. 176.) Such would be the case in regard to Missouri—was she to accept conditions that rendered her absolutely dependent on the will of the general government, all her former and present engagements would cease to be binding, because the sovereignty that made them so had ceased to exist.

Some gentlemen, thinking the ground taken by their co-adjutors was too broad, had narrowed it down to this—that Congress had a right to contract for the surrender of any portion of the sovereignty of the State of Missouri, provided that such right did not deprive her of, or encroach on, her federal rights. One moment's examination of this branch of the question would put it for ever at rest. All had agreed, that if the proposition went to deprive her of a *federal right*, that the requisition could not be made. Under the Constitution of the United States, section 2d—"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and, excluding Indians not taxed, three-fifths of any other persons." He desired it to be remembered, that all gentlemen had agreed, that Missouri could not be deprived of a *federal right*: now, among many other federal rights, was that of Representation in the Congress of the United States, according to numbers, to be calculated in pursuance of the article of the Constitution before alluded to; *five* negroes then were equal to *three* whites in that enumeration, on which representation was founded; by the restriction in question, then, Congress undertook to deprive Missouri of the *means of acquiring a federal right.* Thus doing, indirectly, what, all agreed could not be directly done. Mr. Scott could see no substantial difference between depriving Missouri of a *federal right* or the *means of acquiring a federal right.* They were. both the right and the means of acquiring the right, as regarded Missouri, vested rights under the Constitution, and by no treaty, compact, or law, could she be constitutionally deprived of either; and was Missouri to contract for this surrender, it would make the alliance, as regards her and the other States in the Union, in reference to the whole Union, unequal, unlawful—and, consequently, void; and what would be void if done, it was not competent for the parties to do. It was laid down by Vattel, (page 203, section 177,) "that every State ought to be jealous of her glory, careful of maintaining her dignity, and preserving her independence, and nothing short of the last extremity, or motives

the most weighty and substantial, ought ever to induce a people to contract an unequal alliance. This observation is particularly meant to apply to treaties, (or compacts,) when the inequality prevails on the side of the weaker ally, and still more particularly to those unequal alliances that degrade the sovereignty. Men of courage and spirit, will accept such treaties (or compacts) from no other hands but those of imperious necessity." The restriction in question would degrade the sovereignty, because it would diminish the State independence, and deprive Missouri of the means of acquiring federal rights; and, in the same proportion that the sovereignty of Missouri would be diminished, and the exercise of any of her *constituent rights* rendered dependent on the will of Congress—in that exact proportion would the powers of Congress be increased beyond those given by the federal Constitution. Mr. Scott hoped that it was sufficiently clear, that Congress, neither by *treaty* nor *compact* could increase or diminish their powers, nor was it competent for a *State*, by treaty or compact, to surrender any portion of its sovereignty. It next remained to inquire, whether Congress could, by an ordinary act of legislation, accomplish the object? and this depended on the powers given in the Constitution.

The very act of exacting this restriction as treaty, or compact, and which required the assent of Missouri, showed that it was a portion of the sovereignty of the State that you cannot take away without their consent. The Constitution of the United States sets out with this principle—"that all legislative powers herein granted (not inferred) shall be vested in a Congress of the United States." But, even was the Constitution silent as to the disposition of powers between the general and State governments, a knowledge of the history how the Constitution was formed, would give a strong answer against the assumption of the authority now contended for. The framers of the Constitution were jealous of State rights, and therefore left nothing to be inferred, against which they could possibly provide. The powers of the general government were the delegated powers, and not the powers of the States, or the rights of the people derived from the federal government—All right and authority was inherent in the people; they alone were supreme; they surrendered a portion of their natural and inherent rights to the State authorities, and a portion of the federal government; and the grant by them made, was to be construed only for their benefit, and in the advancement and protection of their other rights. Congress had no powers but those expressly given, or those inferable, as being absolutely necessary and proper to enable them to carry those given into effect. The ninth and tenth articles of the amendments to the Constitution settled this question—the first of which provided, that "the enumeration in the Constitution, of certain rights, shall not be construed to deny, or dispar-

age, others retained by the people." And the second declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." When, therefore, Congress were about to exercise an authority, it was to the enumerated powers in the Constitution that they were to look for the right; if not found there, it did not exist, for all other than those, were inherent in, and expressly reserved to the States, and to the people.

Mr. Scott would not delay the House by attempting a history of the causes and formation of the Constitution. It was well known to have been a matter of compromise between free, sovereign, and independent states; most of whom, at the time of its adoption, held more or less slaves; nor was it reasonable to suppose, that it was within the purview or meaning of the makers, that at any subsequent period, it should be left to the discretion of either party that might become dominant to impose slaves on those who had them not, contrary to their wishes—or to deprive others who had them, or who entertained a wish to acquire that description of property of the discretion to do so. Mr. Scott not only denied the power of Congress to prohibit the citizens of any State from enjoying the advantages resulting from the immediate use of slaves, but he would, also, repel their pretensions to legislate in relation to the increase. Societies, constitutions, and laws, were as much formed to secure the faculties and produce of property, as for the protection of the immediate object of property itself. Let legislators destroy this principle, and occupancy alone, as in olden times would be the only remaining evidence of property and of right.

The powers given to Congress by the Constitution were few, express, limited, positive, and defined; the majority of them were to be found in the eighth section of that instrument, and consisted in the authority to levy taxes, borrow money, and regulate commerce; establish an uniform system of bankruptcy; to regulate the coin, punish counterfeiting, establish post-offices and post-roads, constitute courts, declare war, raise armies, maintain a navy, call forth the militia, organize, and regulate them; to have exclusive jurisdiction over the District of Columbia, and their forts, magazines, arsenals, dock-yards; and to make all laws which should be *necessary* and *proper* to carry into effect, the enumerated powers. Mr. Scott could not discover that the authority to impose restrictions on States, could be derived from any latitude of construction growing out of this section. But the powers of Congress were not only enumerated and expressed in the Constitution; the tenth section was equally explicit in declaring of what attributes of sovereignty the States should be deprived; no State was to enter into any treaty, or alliance, grant letters of marque and reprisal, coin money, emit bills of credit,

make any thing but gold and silver a tender, pass any bill of attainder, ex post facto law, impair contracts, or grant titles of nobility; nor, without consent of Congress, lay imposts or duties on imports or exports, lay any duty on tonnage, keep troops or ships of war in time of peace, or make any agreement with any foreign power, or even with a sister State, or engage in war, unless actually invaded. The States, then, were devested, by the Constitution of no portion of sovereignty but those actually named and voluntarily surrendered; all other powers, and the residue of sovereignty, were inherent in, and expressly reserved to, the States and the People.

It was said, that since the year 1808, Congress had power to prohibit the *migration* or *importation* of such persons as the States existing at the time of forming the Constitution, thought proper to admit; and that, under the powers given in that clause of the Constitution, Congress might prohibit the removal of slaves to Missouri, both as a Territory and a State, and impose the restriction. The Constitution of the United States not only admitted and permitted, but was partly based on domestic slavery; yet gentlemen said it was contrary to the principles and genius of the American government. Although the Constitution in but few instances recognised them to be free moral agents, but acknowledged them to be property and not freemen, and guaranteed to the master an ownership which his fellow-citizen living in another State, and holding different principles, could not legislate from him. The second section of the 4th article of the Constitution, provided that "no person held to service or labour in one State u[nder] laws thereof, escaping into another, shall, in consequence of any law or legislation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour [may] be due." A sister and sovereign State could not emancipate slaves fleeing to its jurisdiction: could Congress, then, do that which the Constitution had said should not be done by the independent sovereignty to which the fugitive fled? The framers of the Constitution never thought that Congress had the authority to prohibit the removal of slaves to any State; or that they would pretend to the still more alarming power of legislating the emancipation of slaves that were lawfully in, or might flee to any State. It was considered as an incident of sovereignty, as a matter of state right and of municipal legislation. The only danger was, that the States would exercise it to the prejudice of each other; against that state of things the Constitution had guarded and deprived the respective States of the exercise of that power which they had without such prohibition. To make the argument more plain, he would state a case—could Congress pass a law operating the emancipation of the slaves in Kentucky, or of their increase? Or, could Congress pass a law, declaring that if a citizen of Kentucky re[moved] to Ohio with his slaves, that in consequence

of such removal his slaves should be free? Or, would it not depend on the Constitution and laws of Ohio? If, then, Congress could not pass a law emancipating the slaves in a State, or pass a law declaring that their emancipation should be the consequence of removing them from one State to another State—it was not within the scope of his faculties to discover how the restriction was authorized by this clause of the Constitution. But let it, for argument only, be granted, that Congress had the power to prohibit the *migration* of slaves from any other State to Missouri, how far would that authority give to Congress the right to legislate in reference to the slaves, and the children of slaves, that were now in Missouri? The power to prohibit the migration had reference alone to the States where the slaves were, and not to Missouri. A general law, then, would be most proper, declaring that no slave should be removed from one State to another; and that would be a question of restriction for the slave-holding States to submit to, and not the question of restriction in regard to Missouri. The term *migration* indicated an exercise of free will, the exercise of which was not to be attributed to slaves; and he believed the real meaning of that portion of the Constitution, was to authorize Congress to prohibit after 1808, that great influx of the rabble of foreign countries, who, migrating to the United States encumbered with their passions and prejudices, might, in the end, endanger the Constitution and the Union. The term *importation*, all understood as solely intended to provide against the further introduction, from abroad, of the unhappy sons and daughters of Africa, and not to give to Congress the power to regulate the distribution of those that were here.

The second section of the fourth article of the Constitution, provided that "the citizens of each State should be entitled to all the privileges and immunities of citizens of the several States." The obvious meaning of this clause was, that the rights of the citizens in one State, should be equal to the rights of the citizens of any other State, and that so far as the citizens of one State had the right to regulate their matters of internal policy, so far should the citizens of any other State have the same rights, privileges, and immunities—not only the rights of the citizens, individually, but their rights taken collectively as States, were to be equal in all respects whatsoever. For example—if the people of the State of New-York had the exclusive power to make their own constitution and laws, and to provide that slaves should, or should not, be introduced, so the State of Missouri, to be equal in power to the State of New-York, must possess the same sovereign authority.

The second clause of the third section of the fourth article, provided that "Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property of the United States." The whole context of this article showed that it was

as *property*, and not otherwise, that Congress were to make rules and regulations. Certainly the boldest advocate for restriction would not contend, that Congress had any *property* in the *persons* of the citizens of Missouri, because they were circumstantially connected with a Territory over which they had a limited control. Surely gentlemen would not undertake to advance the doctrine, that Congress had any property in the confirmed lands of individuals, or in the lands purchased of the government, and patented to the purchaser, and still less had Congress any property in the *rights* of the people. And if Congress even had the power contended for, while they owned the land, it would surely cease to exist so soon as they parted with the soil. The sovereignty of Congress over the Territory as the lords paramount, was but temporary, and could only endure so long as they retained the soil; when that was disposed of, their sovereignty ceased also. Yet, by virtue of this brief and temporary authority, limited in its extent, and short in its duration, Congress were about to fix on Missouri a never-ending condition, that was to continue long after the authority on which it rested for existence had passed away. If, in consequence of owning the land, Congress possessed that description of sovereignty that would authorize them to legislate in regard to the property of the citizens of a Territory or a State, or to dictate what kind of property the citizens should introduce and hold; then might they at this day, undertake to regulate the affairs of the States of Ohio, Indiana, Illinois, Louisiana, Mississippi, and Alabama, and their right to impose restrictions on each of them, similar to that contemplated in regard to Missouri would be equally as unquestionable. The whole amount of the authority Congress could claim under this clause of the Constitution was, to make rules and regulations for the surveying and disposing of the public lands, to regulate the quantities in which it should be sold, the price, and the credit. But this power was limited in its operation to the *property* alone, and by no construction could be extended to the rights of the citizens inhabiting the territory, Congress had no power over the right or property of the citizen, but in certain cases to levy taxes; and this authority was one of those expressly conferred by the Constitution, and was not alone supported by inference.

Mr. Scott would now take a short view of the gentlemen's Gibraltar, behind which they had entrenched themselves, and thought they were secure and invulnerable. The third section of the fourth article provided that "new States may be admitted by the Congress into this Union." But, he contended that, they were to be admitted on equal terms, and to be equal after admission. When Congress *now* used the term *State*, it was to be understood as the framers of the Constitution understood it—they meant a body politic, precisely similar in all respects to those

that then formed the confederacy, and were about to adopt the Constitution, and become parties in the government. The term *State* had a precise, and, if gentlemen pleased, a technical meaning—its attributes were freedom, sovereignty, and independence; by the principles of our government, as recognised by the declaration of American Independence, there were no parties, but those determining to be free, concerned, or consulted in making that declaration. The exercise of the free will was the only act necessary to achieve the moral independence of any people. Such had been the fact, in regard to the United States; and, in point of principle, such was still the case. If a new State only become independent by the act of admission, and was not free by virtue of inherent rights before admission, then he inquired, when the old thirteen United States had become free? Was it by the treaty of peace of one thousand seven hundred and eighty-three? No—for the first article of the treaty only acknowledged a condition that antecedently existed, and of which the conduct and declarations of Great Britain only furnished the *motive* —not the *right*—for the right was from above. Was it by the formation and adoption of the federal Constitution? No—for that Constitution was the act of their own *free will*, which of itself pre-supposed independence as being essential and necessary to make the instrument binding. Americans dated their freedom from the Declaration of Independence, of the fourth of July, one thousand seven hundred and seventy-six. It was then clear, that to be *free*, *sovereign*, and *independent* as a a State, it was only necessary to will and to declare so. To *maintain* that independence required physical force, and was another question, into which he would not now inquire.

Mr. Scott said, that, as a Territory, the Constitution of the United States was but relative to Missouri; it was only on becoming a State that she would incur all the *duties*, and partake of the full advantages of the Constitution. No power could extend the federal Constitution over Missouri as a *State*—it required her assent to be freely given—she must ratify and accept of it before it was her Constitution. All its force and binding efficacy was derived from her voluntary act—and yet gentlemen undertook to impose a restriction on Missouri; growing, as they say, out of the powers contained in the Constitution, when that same Constitution was not applicable to the territorial condition of the country—nor was she any party to the instrument until she became a State, and assented to its provisions. To admit a new State was not solely the act of Congress, it was a compact between the new and the old States. The general government was confederated, formed by compact between separate and independent States; the parts of which were, or ought to be, all equal. Missouri, as a new State, had the *right* to join the compact upon the same terms that others had done, surrendering

only the same proportion of her inherent and political liberties. To make the election to join the compact, she must be considered as free and independent; for, if at the moment of admission she was dependent then the compact would not be binding on her. It was very doubtful whether Congress could give the *rights* of a State to a dependency; but he was quite sure that Congress could not make the dependency *incur the duties of a State*, because they depended on free assent, which an independent people alone could give. The fourth section of the fourth article provided, that "The United States shall guaranty to every State in this Union, a republican form of government, and shall protect each of them against invasion; and, on application of the legislature or of the executive, (when the legislature cannot be convened,) against domestic violence." So sacred was the soil and rights of freemen, that the Congress could not, without violating the Constitution, enter the confines of a State, even to protect them against domestic violence, without a call from the constituted authorities; yet Congress were about to break on the lines of the sovereignty of Missouri, trample down the rights of the citizens, and inhibit the introduction or use of property acknowledged by the Constitution of the land to belong to its citizens. Congress was to "guaranty to every State in this Union, a republican form of government." Independence, as a State, and incorporation into the Union were two distinct things; the first was inherent, the second required the assent of Congress, in giving which assent, Congress were then "to guaranty a republican form of government." This was not one of the *powers*, but one of the *duties* of Congress, and the mistake of this *duty* for a *right* or *power*, had produced all this absurd construction of the Constitution. "*Congress may admit new States into this Union*"—this clause spoke volumes on the subject: "*This Union*" meant the Union then formed, and "*the State*" was to be such a State, as was then entering into the Union. If Missouri was admitted under restrictions and conditions, that did not exist in relation to any of the States then existing it was not "*into this Union*," that Missouri was admitted, but into a new Union. If Missouri was compelled to surrender more of her privileges or a greater portion of her sovereignty, to obtain admission into the Union than other States had done, then, by precisely so much more of her privileges and sovereignty as she had to surrender to obtain admission, just so much the more did she pay for her admission: and then it was not into "this Union" that she was incorporated, but into another Union, formed by special compact in that particular case. And thus every State that was admitted, might be required to submit to some extraordinary condition, until the original principles of the Constitution were entirely lost, and it would become a matter of contract, in which each party would make the best bargain they could, and "this Union" would

be no longer "this Union," nor would the term *State* be any longer intelligible, because it would give you no idea of what were its powers, its privileges, or its attributes. This argument might be further illustrated, by that portion of the Constitution that gave Congress power "to establish an uniform rule of naturalization." Congress were not obliged to exercise the power at all, but if they did exercise it, they must make the rule uniform. So, they were not obliged to admit a State, but if they did admit a State, it must be on uniform principles; for example—Congress could not say that the subjects of France should remain in a state of probation ten years before they could become citizens, and that the subjects of Great Britain should only remain five years in suspension, because this would not be uniform, and would be making one applicant pay a greater price for the privileges of citizenship than another. Just so in regard to Missouri—if admitted, no greater price was to be exacted from her, in becoming a State and entering into the Union, than had been paid by any other State heretofore admitted. And the parallel might be carried further, Congress could not say that the foreigner should become a citizen, but that after he had become a citizen he should not hold land, or any other description of property, because that would be a condition that would defeat the grant, and a restriction inconsistent with citizenship; which, when acquired, placed him, in all respects, on the footing of a natural-born citizen. And so, in regard to Missouri, Congress might absolutely refuse her admission; but, if they choose to admit, they could impose no restriction inconsistent with her condition as a State. Other arguments, and parallels might be shown, but he would rest this branch of the subject here.

Gentlemen, still doubting their authority to impose this restriction, as derived from the Constitution alone, had resorted to precedent to bear them out: Mr. Scott would also refer to those precedents, and show that a large majority of them were in favour of Missouri, and the residue, if precedent at all, could not be so construed in reference to Missouri, because they were not even analogous. In the act of the Virginia legislature of 1789, giving their assent to the creation of a new State in the district of Kentucky, there was no condition. In the act of Congress of 1791, admitting Kentucky into the Union as a *new and entire State*, there was no condition imposed whatever. The next State admitted was Vermont, in 1791, when Congress admitted her as a *new and entire State* into the Union, no restriction or condition was even hinted at in the act of admission. In the deed of cession from North Carolina of 1790, for that portion of territory which now formed the State of Tennessee, an express exception was made in relation to slaves, and Congress were prohibited from making any regulations that would tend to their emanci-

ted by Congress into the Union without condition or limitation, equal in all respects whatever as one of the United States. When, in 1802, Georgia ceded to the United States that portion of territory which now composed the States of Mississippi and Alabama, she had forecast enough to inhibit the application of the ordinance of 1787 to that country; nor was there in the act of 1817, authorizing the people of Mississippi to form a Constitution and State Government, or in the resolution admitting her into the Union, any condition similar to the restriction in question. And in the act of 1819, giving the people of Alabama power to form their Constitution and organize their State, as also in the resolution for their admission, research might in vain be made for any conditions. Of the State of Louisiana he would speak hereafter, and would now turn his attention to the great and binding precedents derived from Ohio, Indiana, and Illinois, as predicated on the ordinance of 1787. The deed of cession from Virginia of 1784, was simply a transfer of the *soil and sovereignty*, and did not contain any stipulation either for or against the introduction of slaves; Virginia had not been so provident in reference to the future settlements in the North West Territory as North Carolina and Georgia subsequently were, because they had the ordinance of 1787 before them, and Virginia could not have anticipated a regulation of the character of that ordinance. When Congress passed the ordinance of 1787, the fifth article contravened the provisions of the deed of cession as to the subsequent division of the territory into States, and when Virginia was referred to for her assent to that alteration, she did, by her act of 1788, consent to that alteration, and that alteration only; for no other modification of the deed of cession was asked for, nor was any other taken into consideration or assented to by Virginia. The sixth article of that ordinance of 1787, from which all arguments seemed to be drawn, never did receive the consent of Virginia, but was an *ex parte* act of legislation, ordinary in its character, and similar to any other act of legislation except its extraordinary qualities of expansion. It was true that the States of Ohio, Indiana, and Illinois had complied with the provision of that ordinance; but it was not in pursuance of its intrinsic binding force; it was to be accounted for only on the principle that the ordinance in its operation on settlers, while the country was yet a Territory and subject to Congressional control, had so regulated the emigration and prepared the settlers to comply with the provisions, that in forming their Constitutions they voluntarily chose to do so. The old Congress, when making the ordinance, had proceeded as in other acts of legislation, until they reached the articles of that ordinance; they then assumed the ground that those articles should be matter of *compact* between the United States and the people and States north west of the Ohio. But with whom were these articles matter of compact? not with the people, for there

were but few, if any, there; not with the States, for there was not probably two thousand people in the whole country, and they were hundreds of miles apart, in little villages, and knew nothing about it, nor were they ever consulted, and had they been, no assent they could have given would have bound the inhabitants now there, or the millions yet unborn. No sir, it was a *compact* with the mountains, the woods, and the lakes, who were personified and made to consent for inhabitants yet to come. But, Mr. Scott said, the most remarkable circumstance was yet behind; the question under consideration was one of the constitutional powers of Congress, under the Constitution. To ascertain what powers Congress had under the Constitution which was ratified the 17th Sept. 1787, resort was made to an ordinance of the 13th July, 1787, several months, in date, prior to the Constitution of the United States. The ordinance was passed by the Old Congress under the articles of confederation. The adoption of the Federal Constitution was the formation of a new government, and an abolition of the old; and yet an ordinance passed by the former government was brought up in judgement to expound and define the powers of Congress under a new and totally different government, under a new Constitution, and new organization. Gentlemen had contended that Congress had revived and ratified the ordinance in the act of 1802, relating to Ohio; the act of 1816, relating to Indiana; and the act of 1818, in reference to Illinois; these being the acts by which Congress authorized those States to form a Constitution and State government. But were he to surrender this part of the argument to gentlemen, could it possibly be deduced, that because Congress had revived the ordinance, in reference to any one or all those States, that, by that revival, it would have any operation beyond the State actually named and to which it was applied? nor had the question ever been made by any of those States which Missouri now made, how far Congress had the power to impose the provisions of that ordinance over a State; they had taken it as a matter of course, because it comported with their wishes and their will. Missouri did not intend to so take it, because it neither promoted her interest or complied with her wishes or her will; nor did he believe that either of those States would now acknowledge that they had not the equal right with any other State in the Union to call a convention and so alter their Constitution as to admit of slavery; and if they had this right, the operation of the ordinance upon them as a *State* was void and of no avail. The ordinance of 1787, then, was a dead letter, so far as it had been resorted to as furnishing any explanation of the powers of Congress under the Federal Constitution, and it was equally inapplicable, as precedent in relation to Missouri, because at no period of the Territorial government had any portion of its provision been extended to that Territory save only those principles that had been incorporated in the [illegible]

4th June, 1802, when the second grade of government had been conferred upon Missouri.

Of the eight States of which Mr. Scott had spoken, and that had been incorporated into the Union since the adoption of the Constitution, five of them were admitted as slave-holding States, and the other three as non-slave-holding States. Louisiana, of which he would now speak, was, though not in order of time, the ninth. And arguments had been drawn from the law of 1811, authorizing her to form a constitution and State government in favour of the restriction, and prejudicial to the sovereignty of Missouri. The argument of gentlemen could gain no strength by referring to that law, because it expressly excepted Louisiana from the operation of the sixth article of the ordinance of 1787, in relation to slaves. And in fact, as early as 1803, when a temporary government was provided for that portion of country now included in the State of Louisiana, and the ordinance 1787 extended to them, the sixth article of the ordinance was not considered applicable to their condition. Every restriction imposed on the State of Louisiana, were precisely those contained in the Constitution of the United States, with the exception of that clause that required them to publish their laws and judicial proceedings in the English language; this provision did not deduct from their sovereignty, and was only shaping their laws and proceedings so as to give them "full faith and credit" in the other States in the Union. Constitution U. States, art. 4. sec. 1. A precedent to be binding ought to be a decision made in some similar case; none had been produced, nor did any exist. The ordinance of 1787, was passed while that country was in the first grade of government—Missouri was in the second grade. Congress had conferred on Missouri the right of self government in all respects whatsoever, nor did he know of any instance in which Congress had interfered after such a transfer of their powers. Then of the nine States that had been admitted into the Union since the adoption of the Federal Constitution, six had been admitted as slave-holding States, and three as non-slave-holding States; the precedents, then, if of any force, were two to one on the side of Missouri.

But Mr. Scott said, there was no absolute necessity to hang any longer on the Constitutional ground. It was unnecessary to argue from the Constitution, or from precedent as alone applicable to Missouri. All the powers Congress had over the Territory was derived from solemn treaty, and that same treaty, gave, guarantied, and secured the rights, liberties, religion, and property of the citizens, and he believed that the obligations Congress were under to fulfil those engagements, in reference to the Territory was as strong as their right to the country under the treaty; and a delay unreasonable in itself, or an ul-

might fairly be construed to be tantamount to an abandonment of the country ceded. The stipulation, that the Territory and inhabitants should be incorporated into the Union, was concurrent with the act of acquisition, they formed part of the same compact. When the province was acquired, it was made a question whether the United States could, constitutionally, purchase and hold foreign territory; that question being conceded, and settled in the affirmative, it only remained to inquire how the government would hold the country acquired, whether the territory should be admitted as States in pursuance of the treaty, or whether it should be held as provinces in vassalage.

Mr. Scott said, that the people of Missouri relied with perfect confidence for admission into the Union on the 3d article of the treaty of the 30th of April, 1803, the words of which were "the inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible according to the principles of the Federal Constitution to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the mean time they shall be maintained, and protected in the free enjoyment of their liberty, property, and the religion which they profess." Various interpretations had been given to this article of the treaty by the advocates of the restriction, some had taken the broad ground, that it contained no stipulation for admission as a State in any way. Others had said that the treaty, in reference to the *people* would be fulfilled by giving them leave to remove east of the Mississippi river, leaving all their property behind, and there mixing, mingling, and becoming incorporated into the Union, with those who reside on a part of the old territory of the United States; while others had contended that Missouri could only be incorporated into the Union, by being attached to some portion of the ancient territory of the United States; and others had argued that the provisions of the treaty only related to the citizens in the province at the time of acquisition, and did not inure to the advantage, or security, even of your own citizens that had removed to the Territory since the treaty. And, to crown the whole, some reasoners more bold than others, contended that if the treaty did contain stipulations for admission as a State into the Union, it was not binding because the president and Senate could not make a treaty to bind Congress. He would not follow gentlemen through all the mazes in which they had involved themselves, but would briefly examine, what obligations Congress were under by the treaty—what rights the people had under the treaty—what was the fair construction and interpretation, honest statesmen would give the treaty—and what appeared to be the evident intentions of the parties,

Mr. Scott hoped it was not necessary for him to impress on American statesmen, the inviolable faith that ought be observed in reference to treaties in the civilized world. Vattel, page 129, sect. 219, seemed to wonder that any man should think, or act without regard to them—"who can doubt that treaties are in the number of these things, that are to be held sacred by nations? By treaties the most important affairs are determined; by them the pretensions of sovereigns are regulated; on them nations are to depend for the acknowledgment of their rights, and the security of the dearest interests. Between bodies politic, between sovereigns who acknowledge no superior on earth, treaties are the only means of adjusting their various pretensions; of establishing fixed rules of conduct; of ascertaining what they are entitled to expect, and what they are to depend on. But treaties are no better than empty words, if nations do not consider them as respectable engagements, as rules which are to be inviolably observed by sovereigns, and held sacred throughout the whole earth." And Vattel continued, in the same page, section 220, that "the faith of treaties, that firm and sincere resolution, that invariable constancy in fulfilling our engagments, of which we make profession in a treaty, is therefore to be held sacred and inviolable between the nations of the earth, whose safety and repose it secures; and if mankind be not wilfully deficient in their duty to themselves, infamy must ever be the portion of him who violates his faith." He did not wish to see the charge retorted on his government, that had been so correctly made by her in regard to Spain. To disregard the treaty under which Missouri claimed admission into the Union, would be a double breach of faith, first as regarded the power with whom it was made, next in relation to the people of Missouri for whose exclusive benefit the third article was introduced. Vattel in the same page, section 221, declared that "he who violates his treaties, violates at the same time the law of nations; for he disregards the faith of treaties, that faith which the law of nations declares sacred, and so far as depends on him, he renders it vain and ineffectual—doubly guilty, he does an injury to his ally, he does an injury to all nations and inflicts a wound on the great society of mankind." Mr. Scott called on gentleman to know if they were prepared to bring this charge on their government, or to sustain it themselves? Were gentlemen ready to sport with the engagements of the nation, and set the faith of treaties at defiance, by subjecting them to whimsical and constrained constructions not recognised by the laws of nations, and in opposition to the plainest dictates of common sense. He believed he had even sufficiently established the indispensable necessity of keeping promises, alike interesting to the contracting parties, and to the universal society of mankind.

But the intention and meaning of the treaty of cession, had, with gentlemen in favour of the restriction, become matter of great doubt. The meaning of the treaty is said to be involved, and the words used obscure. Vattel, page 249, sect. 273, said that "words are only designated to express the thoughts, thus the true signification of an expression in common use, is the idea which custom has affixed to that expression. It is then a gross quibble to affix a particular sense to a word, in order to elude the true sense of the entire expression." The word "incoporate" had been said not to mean admission as a State into the Union. Had the law of nations and the known rules of construction been silent, the plain and common sense of every man would teach him what was the intention of the parties to the treaty, from the "entire expression," it was not fair to select a single word from a whole sentence, and on that alone to bottom what the construction of the whole sentence was, or ought to be. Vattel, page 249, sect. 274, declared that "all these pitiful subtleties are overthrown by this unerring rule; *when we evidently see what is the sense that agrees with the intention of the contracting parties, it is not allowable to wrest their words to a contrary meaning*, the intention sufficiently known, furnishes the matter of convention; what is promised and accepted, demanded and granted." What then was the true and legitimate understanding of being "incorporated into the Union of the United States." Did it, as some gentlemen supposed, furnish the people with the privilege of removing from the territory, from their property, and their homes, into Illinois, for example, and there of being incorporated as citizens of the United States, as a part of the State of Illinois into the Union? And would this comport with that part of the treaty that secured to the inhabitants their liberty and their property? this would be a passing strange construction of the treaty in fact, to provide for maintaining the citizens in the full enjoyment of their "property," which, to obtain the advantage of incorporation into the Union, you secure him the "liberty" to leave. A construction, such as the one contended for by gentlemen, would not only operate the greatest injustice, and that we were not at at liberty to suppose a just notion would do, but would lead to an absurdity which we ought always to avoid. Vattel, page 252, sec. 282, said "*Every interpretation that leads to an absurdity ought to be rejected*, or in other words, we should not give to any piece a meaning from which any absurd consequences would follow; but must interpret it in such a manner as to avoid absurdity," he could not resist the conviction, that an interpretation which required of the people of Missouri to abandon their property, to secure their liberty as citizens, under the treaty, or that forbid their admission into the Union, but in conjunction with some portion of the ancient territory, was in the language of Vattel, "a gross quibble" and an "absurd construction," not

within the intention of the parties to the treaty, which intention, in all cases of national and municipal law, was always to be regarded in construing the instrument.

Mr. Scott said, that this great rule of construing the instrument with reference to the intention of the parties, was laid down by Vattel, page 258, sec. 291, "to defeat the pretexts and pitiful evasions of those who endeavour to elude laws or treaties. *Good faith adheres to the intention, fraud insists on the terms*, when it thinks that they can furnish a cloak for its prevarications." The fatal results that would accrue to the rights of one party, was it left for the other to put such construction as suited his interests and views on the instrument, was too apparent to require elucidation. Vattel, page 245, sec. 265, gives it as a "general maxim, or principle, on the subject of interpretation, that *neither the one nor the other of the parties interested in the contract, has a right to interpret the deed according to his own fancy.*" Nothing could be more clear than the propriety of the rule, was it competent for one party to disregard the intention, and put such construction on any instrument as comported with his views of policy or his "fancy." It would result in this, that having the liberty of affixing such meaning as you please to my promise, you would have the power of obliging me to do whatever you choose contrary to my intention, and beyond my real engagements; while, on the other hand, if I am allowed to explain my promises as I please, I might render them vain and illusory, by giving them a meaning quite different from that which they presented to you, and in which you must have understood them at the time of your accepting them. Neither Missouri nor Congress, had the exclusive right of interpreting the treaty under which Missouri claimed admission. He was, however, willing on the part of Missouri, to abide by that construction which those rules would furnish, that had been established and practised on, long anterior to 1803, and he had no hesitation in saying that the people he represented, would abide by, and redeem his pledge, on this, to them the most important of all subjects.

Mr. Scott would not state it as his own opinion only, but would support it by another reference to the law of nations, Vatel, page 245, section 226, that "on every accesion when a person could and ought to have made known his intentions, we are to assume for true against him what he has sufficiently declared:" this was an incontrovertible principle, and was equally applicable to every description of agreement, whether in its character of a public or private nature, it was a duty which both individuals and states owed to each other, who did not mean to make a vain play of words, to express themselves with truth, and according to their real intentions; were it otherwise it would be perfectly useless to form contracts or treaties, if the meaning could be clearly collected from the

whole tenor of the instrument, we were to take that as his evident intentions. Vattel, page 246, section 268, said that "in the interpretation of a treaty or of any deed whatever, the question is to discover what the contracting parties have agreed upon, to determine precisely on any particular occasion what has been promised and accepted; that is to say, not only what one of the parties intended to promise, but also what the other must reasonably and candidly have supposed to be promised to him, what has been sufficiently declared to him, and what must have influenced him in his acceptance." He inquired of gentlemen whether, honestly and candidly, it was not sufficiently evident from the whole tenor of the treaty in question, that the United States had promised to admit the ceded territory into the Union as States; and whether that did not appear to be one of the conditions of the acceptance of the terms, and the transfer of the country. Gentlemen had made the inquiry—"on the words of which of the parties was the greatest stress to be laid?" He was prepared to give, from high authority, a conclusive answer to this interogatory. Vattel, page 245–6, section 267, said "it is very certain that in order to discover the true meaning of the contract, attention ought principally to be paid to the words of the promising party, for he voluntarily binds himself by his words, and we take for true against him what he has sufficiently declared." The United States had voluntarily promised to "incorporate the inhabitants of the ceded territory into the Union of the United States," and we were to take for true that such was the understanding of the parties to the treaty, and upon this ground the people of Missouri claimed admission into the Federal Union as a State.

Mr. Scott would not enter into the argument whether the President and Senate could, by treaty, bind this House to the performance of any engagements; whether the treaty-making power could or could not lay Congress under obligations was an abstract proposition, and not the question under consideration. The treaty under which Missouri claimed her rights had not only been made by the constitutional and competent authorities of the nation, but had actually received the sanction of this House, and of every branch of the government in every practicable way. Various acts of Congress had been passed appropriating money to carry the treaty into effect, to authorize the President to take possession of the country, to establish territorial governments within the territories—leading them from grade to grade of government, until Louisiana had, in pursuance of the treaty and of the promise contained in the act of the second of March, 1805, been admitted as a State into the Union, even without any restriction in relation to slavery, and Missouri had now come prepared to take the same step; and, however valid the objection of gentlemen might have been at an early day, before Congress had acted in regard to the treaty, it was now too late to make the objection, after an

uniform concurrence of various acts of legislation, acknowledging the binding force of the treaty for eighteen years.

The treaty then, having been made by the constituted authorities of the country, having received the uniform sanction of the national legislature, and being, in its object and terms, sufficiently clear, the only remaining question on this head was, what obligations the government were under by the treaty, and what were the rights of the people of Missouri. Vattel, page 196, section 164, said "as the engagements of a treaty impose on one hand a *perfect obligation* they produce on the other a *perfect right*. The breach of a treaty is therefore a violation of the perfect right of the party with whom we have contracted, and this is an act of injustice against him." The obligations on the part of Congress, under this valid treaty were 'perfect' or absolute, the *rights* of the people of Missouri were also *perfect*, in contemplation of the parties and the law of nations; they had the real and indubitable right to require the fulfilment of the engagement, a refusal was a violation of the right, and of the original obligation; there would no longer be any security in the commerce or contracts between mankind, if the faith of promises were not regarded in relation to each other; the security, the happiness, the tranquillity of the whole human race depended on justice, and the regard that was paid to the rights of others. The rights of the people of Missouri, under the treaty, were not limited to the bare admission as a State into the Union, its provisions extended to securing them in their actual possessions and the rights of property; their right to ask, nay, even demand admission into the Union as a State, so soon as they had numbers sufficient to entitle them to a representation on the floor of Congress, was *perfect*, and, he hoped, would not be evaded or refused.

Mr. Scott would now proceed to show that, whatever might have been the original power of Congress over the liberties and property of the people of Missouri, they had parted with that power, and confirmed the people in all their rights; and that Missouri had the right, both on the ground of written law and custom, to declare exemption from the restriction in question. The act of 1803 authorized the President to take possession of the country, and to fix a temporary government; and that act showed that Congress, at that time, felt something like a due regard for the rights of the people and the obligations of the treaty; for it had authorized the President to employ *all means*, including military force, to maintain and protect the inhabitants in the free enjoyment of their *liberty*, *property*, and *religion*, using the express words of the treaty of cession. The act of 1804, by which the province was divided into two Territories and a temporary government established for each, so far as regarded Missouri, extended the powers of the governor and judges of Indiana over that Territory, and gave them *full legislative powers*, but re-

quired that all the laws which might be passed should be transmitted and laid before Congress. When those officers went to the territory they found it full of slaves, and one of the very first laws they ever enacted, on the first of October, 1804, was that regulating slaves; this law, regulating the relations between master and servant, was reported by the governor and judges to be laid before Congress; and, as it might be out of order to say that Congress had not done their duty, he was at liberty to conclude that they had passed on, and approved of the statute. This law had laid open to government the actual condition of the country; and although Congress, with a full knowledge of this fact, had again, as early as the third of March, 1805, legislated in regard to the territory, yet it had never entered into their views to interfere on the subject; on the contrary, the 9th section of the act of 1805, expressly confirmed and sanctioned all laws in the Territory at that time, of which, that regulating slaves was one, so that we were no longer left to infer the consent of Congress to the territorial law of 1804, as regarded slaves, but were at liberty to state that Congress had solemnly recognised this description of property, and the right of the people to retain and regulate it. In fact, the 13th section of the law of Congress of 1804, had recognised and continued in force all the laws of the territory at the time of acquisition, until the same should be altered, modified, or repealed, by the local legislature. All the Spanish and French laws, written and unwritten, had recognised the rights of the people to have slaves, and Congress expressly acknowledged their validity and binding force. The act of 1804 had made a distinction between the territoris of Orleans and Louisiana, (now Missouri:) the 10th section of that law had prohibited Orleans—first, from *importing slaves*, second, from introducing those imported after 1798; and, thereby, against all introduction except by actual settlers. But those provisions were confined to the Territory of Orleans, and never were extended to the upper Territory; it was so much more inland that Congress believed it unnecessary to make any provisions on the subject, and the upper Territory was left to act according to her own discretion. The two acts of Congress of the second and third March, 1805, had made another distinction that was favourable to the pretension of Missouri: by those laws the omnipotent ordinance of 1787, with the exception of the 6th article, was extended to Orleans; but no part, or clause thereof, had ever been extended to Missouri; and the honourable gentleman from New-Hampshire, (Mr. Claggett,) was vastly mistaken when he supposed that the ordinance was ever extended to Missouri, either by positive law, or the inference he had drawn from the powers of the governor and judges of Indiana having been extended over the Mississippi. It certainly could not be sound reasoning to say, that because those officers, when in Indiana, were subject to the operation of the ordinance,

that when they crossed the Mississippi, they had carried it on their shoulders and packed it on the people of Missouri. Orleans, however, notwithstanding the inhibitions in regard to the introduction of slaves contained in the act of 1804, and the extension of the ordinance by the law of 1805, had been admitted into the Union as a State without any restriction; and Missouri, although never subjected to any restriction or controul in relation to slaves, was now for the first time, after a lapse of eighteen years, during all which time, every encouragement had been given, and the tenor of every act, run counter to the present pretensions, to be apprised of this disposition on the part of the government, and supended from the Union if she refused to comply. All the laws to which he had referred, were passed during the time the territories were in the first grade of government; and in each act, Congress seemed to have reserved something like a superintending power over the territorial laws, by having required copies of all their acts to be transmitted to be laid before Congress. But the act of 4th June, 1812, establishing the Missouri Territory, and giving the second grade of government, had dropped this and all other provisions, indicating any thing like a superintendence over the laws of the Territory, and had given to the local legislature, *all legislative powers* without reserve. This act had given to the executive, all the powers possessed by the executives of the States, and even more, for the governor had, in addition to granting pardons for offences against the Territory, the power to grant reprieves for crimes against the United States. This law had regulated the representation, and based it on the *free white* population of the country; thereby acknowledging that Congress were well apprised of the existence of other than *free whites* in the Territory. This act, in addition to the treaty, naturalized the citizens and regulated their privileges; and again declared that *free white* males alone should be eligible to offices, and competent as jurors. It gave to the legislature the right to regulate the rules of its own proceedings, freedom from arrest, and from question elsewhere, and *all* and absolute powers of legislation, excepting and reserving none; and again confirmed all laws in existence in the Territory up to that time, of which that regulating slaves, as formerly, was still one. The 14th and 15th sections of the act of 1812, contained all the provisions, that now formed the *propositions* to the State, in the law under consideration; they were all the people had notice of, or had the right to expect Congress would require, at the time of their admission, and, he believed, Congress could reasonably ask or constitutionally impose.

Mr. Scott would now endeavour to point out some of the absurdities and inconsistencies growing out of this sweeping doctrine of gentlemen. The lovers of this country ought to remember that the general government were gradually assuming authority, and increasing the latitude of con-

struction. Did members understand what Missouri required of Congress? She did not ask a magna charta, or to have a bill of rights dealt out to her, for she had both in the Constitution of the land, and in the treaty of cession—she only asked of Congress the *mere means of organization.* Missouri might do, by her local legislature, what she desired Congress now to do; she might authorize, by virtue of inherent right, the election of members to a convention; and that convention, when met, might form a constitution—she might do all this, and produce the patriotic State of Tennessee and others, as an example. The only difficulty that could exist in this course, would be that of boundaries; on the one hand, all the people intended to be included within the State might not be represented in convention, on the other, the convention might, in part, be composed of members, some of whom might not ultimately fall within the State boundaries. It was not by virtue of any *grant* from Congress, that the people of Missouri derived their *right* to form a constitution: if it was, then it would be competent for gentlemen to agree that Congress could impose conditions in making the *grant.* The leading spirit of all American institutions, nay, the essence of American liberty was, that the people had the inherent right to make, mend, alter, change, and modify their own form of government. Missouri, then, only asked the *assistance of Congress in calling a convention,* and not to dictate what that convention should do when assembled. But in affording this assistance, which was mere matter of form, Congress were undertaking to attach to it matter of substance, and to regulate the State of Missouri, and that too, permanently and for ever, on one of the most important points of internal policy.

It might be important on this question to clearly understand what was a constitution. Mr. Scott would define it to be, a fundamental law, establishing a form of government, defining its parts, its powers, its relations, and its duties, being paramount to, and even controlling the legislature. The power that bound a legislature must be sovereign: the authority that made that a constitution was sovereign power, and ought to be above all human control. But if Congress had the authority both to bind the legislature of Missouri and to control their convention, then it followed that Congress were the sovereigns of the people of Missouri, and they were not left the poor privilege of choosing masters. The essential attributes of sovereignty of saying who shall be the rulers, and what quantity of power they should have, and how distributed, was taken away from the people. Time, and experience, by which all governments improved, would be of no use to that people in regard to one part of their constitution. The independence of the State, so far as it could be effected by the operation of the restriction, was gone, and all modification of their government, so far as it depended on their consti-

tion, was to be inhibited to them. Among the constellation of States, seeming to act in concert under one common head, claiming the advantages and privileges of one common Constitution, Missouri would present an anamolous case of a people in America, not governed by their own consent and free will, but by that of another; yet it was pretended that this was self-government, it was, however, a limited, degraded, conditional, dependent, independence unknown to the principles and genius of our institutions. The very act of forming a constitution, was a sovereign and independent exercise of power, resting alone for the authority to do so, on the free will of those concerned, and on the *law of man*, which was paramount to all law and all constitutions, and were we to go back one step more, it would be found that the election of members of a convention, was one of the very first independent and sovereign acts that a people could do; for, was not the election of members of a convention a sovereign act, the sovereignty of the people would not be represented, which was essential in fixing first principles and establishing a form of government. But how did the case stand here, it was true that Mr. Scott was now heard, and was pleading the cause of the people of Missouri—yes, poorly pleading it; but was Missouri represented here, had he a vote to give on this, or any other question, and was he ever to give his assent? It would not bind the most obscure individual in the land, and he was still further deprived of the privilege of entering his dissent to this measure on the journals of the House. The restriction under debate, was to form an irrevocable feature in the constitution of the State of Missouri, and Missouri was not only unrepresented in Congress, but she was to be deprived of the privilege of being represented even in convention on this point—that was, she shouldnot exercise her free will on this as on other questions to be taken into consideration in the formation of her constitution, but was absolutely and unconditionally to submit to the restriction. This being the true state of the case, it resulted in this absurdity; that part of the constitution of the State of Missouri was to be left to the people, subject to such alterations and modifications, as time and experience should render necessary; but the other portion of the constitution Congress were parties to, being matter of compact, and like the laws of the Medes and Persians, was irrevocable and unalterable. The corollary of the most inconsistent character, that resulted from the restriction, was, that a portion of the constitution of the State of Missouri would derive its existence from Congress, while another portion of the same constitution gave being to a part of Congress itself; where the conclusion was so repugnant to the dictates of common sense, we were compelled to acknowlege that the premises were somewhere wrong. Mr. Scott had said that an act of Congress to authorize the people of Missouri to elect members and to meet in convention, was

mere ceremony, and might have been done by the territorial legislature. In performing this act of ceremony what were Congress about to do? they were about to interlope a condition, the effect of which, if Missouri refused to accede, was, the authorized convention of the people of Missouri was not an authorized convention, and the constitution itself which they had formed in pursuance of law, and by virtue of inherent rights, was not a convention, and every conclusion drawn from the necessary independence essential to the act amounted to nothing. Congress were about to prejudge the people of Missouri: how did gentlemen know what provisions they intended to make in their constitution? How did gentlemen know whether the constitution of Missouri would be republican or otherwise? With the aid of all their optics and political sagacity, they were not able to pronounce that the people of Missouri would not tender a constitution in every way comporting with the letter and spirit of the Federal Constitution, and perhaps complying with the wishes of gentlemen. This was not the time to talk of conditions: impartial judges always waited till the whole case was laid open, before they made up their opinions. Congress then ought to suspend their operations until they had seen and examined the constitution of Missouri, it was then, and not till then, that Congress could be able to determine whether its principles were republican, and its provisions just. Mr. Scott was disposed to be charitable, but he really could not believe that gentlemen were serious when they contended that Congress, as the guardians or masters of the *Territory of Missouri*, had the right to dictate what should be the attributes of sovereignty of the *State of Missouri* hereafter to be formed; he protested against the principle that the representatives of *States* and the *people*, could rightfully impose shackles or restrictions on the *States* or on the *people*, this would be reversing one of the plainest maxims, and placing the *creature* above the creator; for Congress, nay, the Federal Constitution itself was but the creature of the people and of the States. Suppose the people of Missouri were to meet in convention under this law of Congress, and to make a constitution comporting with all its provisions, save only the restriction, and that they were to reject, what would be the consequences? had gentlemen weighed them as it was their duty to do? Could Congress do any thing more than refuse her admission? Would Missouri progress as a State government, out of the pale of the Constitution and your laws? Or would she resolve back to a a territory? A case that might lead to awful consequences, and quite probable to occur, might, with great propriety, be here stated for the consideration of members. Missouri having formed her constitution, proceeds to organize her government, elects her governor, establishes her judiciary, appoints her judges, and proceeds as a State. Congress, in consequence of her not complying with the restriction, affects to consider

her as a Territory, and appoints her a governor, commissions her judges, and other officers, and they repair to their posts to undertake their duties. The people of Missouri say, you are not our officers, we will not be ruled by by you, nor will we submit to your adjudication on our rights—what were gentlemen prepared to do? Would they shamefully retreat and permit Missouri to be triumphant, or would they rally an army and force submission at the *point of the bayonet?* What! shed the blood of the people of Missouri, your friends, your brothers, because they contend for the right of self-government, for being Americans! That portion of the States that think Congress have not the power to impose restrictions on the people of Missouri, will not join in the crusade, nor will they suffer Missouri to be subdued; because, if she falls in contending against the principles of the restriction, their turn will next come. The bayonets of southern and western men, would not reach southern and western hearts. If it had been foretold by any one, that in the short period of thirty-three years after the adoption of the Federal Constitution, that in America the spectacle would have been exhibited of a portion of the people contending for the *right of self-government*, and the right was to them denied, he would not only have been placed amongst the false prophets of the day, but would have been called a madman, if not a fool—and yet such was the melancholy fact, and that too, gravely contended for on the floor of the American Congress. But this was not the only danger if the doctrine of the restrictionist was carried into practice; there were others, that if not so immediately obvious were equally certain; one was, that under this latitude of construction Congress might go so far as to make the *new States* depend on Congress for *all their powers and all their privileges*; new States thus admitted, might, in the end, enlist on the side of the general government and swallow up the old States, producing consolidation; they would naturally feel degraded and entertain at least a disposition to abridge the superior privileges of other States, and reduce them to a level with themselves, while the other side would present a view of the great embarrassments that would arise in defining the proper line of jurisdiction among a confederation of States, not possessing the same powers and privileges. Jealousies and distrust must follow such a state of things, that would have a tendency to disunion, nor was it reasonable to suppose that *any State* would long support the general government, if that government interfered with its domestic concerns.

It has been rightly said that this part of the Constitution was matter of compromise: the framers of that instrument had taken special care not to interfere on those subjects where the feelings and interests of the several States were so much a variance. Gentlemen, however, more wise than their ancestors, wished to do that, by an act of general legislation,

which the Constitution had thought most prudent to leave to the States respectively. If Missouri was not to have the right of domestic slavery, from whence did the other States in the Union derive the right? they enjoyed it before the confederation, they enjoyed it under the confederation, and stipulated for its duration and preservation under the Constitution—that Constitution which provided for, not only the States that were then parties thereto, but for all other *new States* that Congress might thereafter admit to a participation in the compact. Mr. Scott could see no essensial difference in principle, between dictating the whole or any part of a constitution to a new State, and the alteration or total abolition of the constitution of an old State: that feature, or rather that silence in the constitutions of some of the States, which permitted the citizens to hold slaves, seemed particularly to fall under the ban of gentlemen as anti-republican. If such was the fact, and the power contended for in relation to Missouri was possessed, why not, at one dash, blot it out from all those constitutions? why not, in the rage for universal emancipation, liberate all the Cuffees of the nation, bring them to the hustings, let them vote, make them alone, or in part, eligible to all the offices in the government, place them under the canopy where the chairman was then sitting, fix them in the judgement seats, promote intermarriages, and make us one people? If Congress had the right to abolish slavery, they must have the convenient right to abolish the right of representation attached to them; why did not gentlemen go the whole? why fritter down by piecemeal, the rights of the slave-holding States? But look at the other side of this mammoth power; he desired to bring the question home to gentlemen; a member from Ohio (Mr. Brush) had contended that under the 8th section of the Constitution that gave Congress the power "to provide for the common defence and general welfare," they could impose the restriction on Missouri, because he had assumed it for granted that to limit the negroes to certain latitudes, and to confine them within certain limits, would be promoting the common defence and general welfare. Now what would contribute to the common defence and general welfare was mere matter of opinion, and it was not always that the *means* used produced the *end;* a mistake in the one was sure to defeat the other, and it appeared to Mr. Scott much more reasonable to suppose that the common defence was weakened, and the general welfare much more endangered, by confining the slaves within certain districts, condensing their population, and enabling them to act in concert, than to spread them over a vast extent of territory, distributing them in small proportions among the whites, and thus prevent the probability of insurrection, from a want of capacity to concentrate their forces. If then, an *occasional majority* of Congress had the right, under this or any other clause of the Constitution, to say that, in their opinion, it promoted the common

defence and general welfare, that slavery should not exist in certain States of the Union, a counter majority, at any other time, under the same clause of the Constitution, would have the power to declare that it comported with their views of common defence and general welfare that it should exist in *all* the States, and that the non-slave-holding States *should admit* slaves within their borders, under pain of *suspension* or *expulsion* from the Union. How would gentlemen then stand affected? would they not then declare against this mighty power exercised, upon mere speculation, whether this or that measure promoted the common defence and general welfare of the nation. In point of fact, there was but litte, if any, difference between taking away or forcing upon, any person or people, that which they did or did not want; each was equally a violation of their rights.

Governments were instituted as much for the protection of the *property* as the *person* of the governed. So sacred was this principle, that in no instance, by the Constitution of the land, could private property be taken, even for public use, without compensation. But what compensation was offered to Missouri for this privation of her rights? what remuneration was offered to the slave-holding States, who had an equal interest in Missouri with the non-slave-holding States, for this deprivation of their right to emigrate to that country with their slaves? did not the restriction take from this portion of the community a part of their interest in that Territory, and diminish the value of the lands they had already purchased for themselves and their children? In fact it amounted to a *fraud* on the purchasers; the lands had been sold while certain regulations existed, that induced them to purchase, and to pay a higher price for the soil; but so soon as Congress reap the advantages of these false pretences, they then, for the first time, foreclose the right of the citizens to take with them their hands to operate on the soil which they purchased, alone with that view. Between individuals in a court of justice (if there was any justice left in the land) money, paid under such circumstances, could be recovered back, and the enforcements of the out-standing payments be enjoined. By the Constitution of the Union, Congress could pass no *ex post facto law, or bill of attainder, or any law working the corruption of blood, or forfeiture of property.* The restriction in question was ex post facto, as regarded the Missourian, because it devested him of a vested right, in the liberation of his slaves; it was ex post facto as related to the vested right that the purchaser of land, acquired, at the time of purchase, to take with him to the country any description of property that would facilitate the improvement and cultivation of his lands: such was the inducement and reasonable expectation at the time of purchase. Let the restriction become a law, and the emigrant would stand attainted, and convicted of a crime that operated a forfeiture of his property.

if he removed to the State of Missouri, and took his slaves with him: and that amendment to the fifth article of the Constitution, which declared, that no person should be deprived of *life, liberty, or property*, without due course of law, became inoperative; and the citizen was devested of his property without Constitution, or law, or judge, or jury. Surely gentlemen were wrong, when they sought refuge for the power to impose this restriction, under that portion of the Constitution that authorized Congress to "regulate the intercourse between the several States, and between the United States and foreign governments." Missouri was *not yet* any portion of a foreign government; and the right to make regulations between the several States, was essentially different from making a *restriction*, or regulation in respect to one particular State. When Congress acted between the several States, they had an eye to something like reciprocity; but here there was none—all the advantages and privileges were taken from Missouri, and none given in exchange. By the principles of the Revolution, Missouri could not be taxed without a representation and her own consent, yet she had been taxed during the late war, and had most cheerfully furnished her quota of men and of money, without murmuring, or exhibiting one symptom of discontent. So much for a people's surrendering the smallest portion of their rights: gentlemen, presuming on their patriotism and love of country, were now, in continuation, about to tax them out of their *rights and privileges*, and leave them without the means of redress.

Mr. Scott would ask gentlemen whether the people of Missouri were to be considered free and independent before the formation of their Constitution and admission into the Union? or, whether they became free and independent only after their admission as a State? If they became free and independent alone by the act of admission, then it would follow that they were not competent to form a Constitution, because they did not possess the free will and sovereignty that was essensial to such an act; and, as the general government was confederated, and formed by compact, Missouri could not be considered capable of entering into the compactive Union, because she was not a free agent. But if, on the other hand, Missouri was to be considered as free and independent before she formed a constitution and was admitted into the Union, how was she to lose that independence after her Constitution was formed? The case had already been supposed, that Missouri, having formed her Constitution, proceeded to her operations as a State; he would now put it to gentlemen in another shape, and inquire if they did not intend to use force, to what other description of process they would resort to effect a repeal of the charter of Missouri? A *quo warranto* had been named! What! declare Missouri out of the pale of the Constitution, not amenable to your laws, not a member of the federal family, and consequently,

not within the jurisdiction of your courts; and yet to issue, from one of those very courts, a quo warranto, to inquire by what authority the people exercised the right of self government? Mr. Scott said that if it was reserved for him to make a return to that writ he would endorse upon it the Declaration of Independence, and reply that the right was from God. Gentlemen would find, that if such an unhappy state of things was produced by the restriction, it would be necessary to issue some other description of process to deprive that people of their right of self government.

It certainly did not require any argument to prove that Congresss could not incorporate a people and make them a State without their consent, and if they could not, it followed that the converse of the proposition was true, that it was their own free will and consent, that made them a State, and not the act of Congress. Members, however, had taken the other ground, and had argued as though the law in debate was to constitute the State of Missouri; but the manner of its application was indeed very singular, it was thus: That if the constitution of Missouri made, in pursuance of this law, turned out to suit Congress, then the State and the people were to be considered as *ex post facto independent*, but if that constitution on presentation was not palatable, then this *legerdemain policy* did not attach to the condition of Missouri, and she was to be considered as not having acted at all. The same laws and principles of eternal justice, that ought to regulate individuals in their private transactions, ought also to be regarded by States and nations: one of these was, that a bond or an indenture entered into under duress was not binding on the party. By a parity of reasoning, was Missouri to form a constitution under the ban of the nation, would it be binding on her after admission? If the ground taken by gentlemen, practically speaking, be correct, that all negroes and their increase are *naturally free*, why dragoon Missouri into a constitutional acknowledgment of the fact? Why make them declare what the law of nature had already declared? If, on the other hand, the attitude assumed be indefeasible, why enact a restriction, that the State could turn round and repeal? Why produce such an unpleasant collision between the federal and State authorities? It was, indeed, matter of regret, to see gentlemen persevere in spending their time and the people's money in legislating to no effect, as though they were deputed here to rivet, either by direct or indirect means, the shackles on a portion of their fellow citizens. Missouri did not intend, by any act of hers, to furnish the argument, that she had consented to remain in, or to return to, vassalage. And was she to meet and form a constitution under such circumstances, and then at any subsequent period to attempt to alter the restriction or shake off this odious badge of degradation and distrust? the advocates of the measure would then say, that

whether they had the right to impose the restriction or not, Missouri had consented to it, that the people had *voluntarily entered* into terms, and that they and *all posterity* were bound on the subject. This would be an unwarrantable, if not an unwothy exercise of power and cunning on the one hand, against a *supposed* weakness and simplicity on the other. This, in fact, would only be a *supposition;* for a people contending for their rights were always strong. It was his duty to apprise gentlemen of the true state of the case; he owed it to the people he represented, to speak their *sentiments* and their *determinations*, of which he was well advised—and he owed it to the representatives of the nation to tell them the truth, however rash it might be deemed, because the people they represented might one day bleed, in contending for and against this restriction. But the truth was, that although the people of Missouri were accustomed to look to Congress for many laws, and as the dispensers of all good, they had not lost the dignity of their natures any more than the citizens of States, who were accustomed to look to their own States for supreme authority. The independence of that people could only be taken from them by *conquest* or *consent*—he did not deny the power of the general government to *conquer* or *compel* submission; but *consent to this restriction they never would.* They would not acknowledge that independence was not their birth-right with others. Had the Territory of Missouri sufficient physical strength to assert her rights, no attempt would then be made to impose this or any other restriction; her approach to good fellowship and the Union would be hailed from afar; she would be greeted with smiles, and laughed to scorn.

The authority now contended for would give the equal right to distribute and regulate all the powers of the internal government of Missouri. Under this alarming latitude of construction, Congress might give to the rulers of the State all the powers, and produce an aristocracy; or, they might reserve to the people all authority, and yield an arrogant mobocracy: indeed what might they not do in the moments of mistaken philantrophy, and misguided zeal for liberty and equality? Gentlemen might not only prohibit the further introduction of slaves into Missouri, they might not only emancipate all those that were now there, but they might violate the most sacred principles of the Constitution, and establish a standard religion; for it was but one step, from the violation of the rights of property to the violation of the rights of conscience.

Mr. Scott said, that this was not a question "whether slavery should exist?" but merely where should the slaves, now in America, be permitted to reside? the mistake of this proposition seemed to have measurably produced all this contention and strife. Was this an original question, whether we should subject a portion of our fellow beings to a state

of servitude and degradation, he believed that the people of Missouri, from their innate love of liberty, equality, and independence, would be among the first to declare against the principle. But the absolute condition of that description of persons did exist, and actually had existed, long before even the first settlements were formed in Missouri; and if there were any advantages to be derived from holding that description of property, the people of Missouri, as citizens of the United States, had the right, in common with others. Congress, in deciding that they should not be introduced, as one of the species of property, under our constitution and laws, were doing that section of the country a wrong, because it placed them, in powers and privileges, below other States in the Union; and when a wrong was meditated on any people, they alone were the judges: such had been the current doctrine, and so considered by the United States themselves, when they determined on that course, with regard to Great Britain, which led to American Independence. If gentlemen were not predetermined to fix this restriction on Missouri, and would take the trouble to mount up to first principles, they would find that it was not a mere question of power, growing out of the construction of the Constitution, but that there was another law, paramount to all written rules and regulations, that operated on and controlled the question—it was *the law of man;* it was his eternal and indefeasible right to self-government. It was an idle calculation to believe that the State of Missouri would lose sight of this *law of man* in adjusting their constitution or contending for their rights. It was true that the people of Missouri had been a long time in pupilage and wardship, but they had never been in bondage. Although derived from Spain, the citizens were not the poor remnant of Spanish despotism—the great portion of them had been born in a land of liberty; they are your relations, your friends, your brothers; each State in the Union had some interest there; and they were freemen, who knew how to appreciate, maintain, and defend their rights. A maxim might with great propriety be here applied—it was, that whenever illegal or improper objects were to be attained, that they drove the supporters of them to improper and illegal means, to effect the object. The parliament of Great Britain, although deemed *omnipotent*, never had, in reference to the colonies, attempted any thing that would bear a comparison with this restriction, though the powers of Congress were express, limited, and defined. The force of precedent had been illustrated in the course of the debate. Let this restriction prevail, and then STATES BEWARE; for it was thus that a tyrant, about to subjugate the liberties of a people, selected an obscure individual, whose fate would excite no alarm, and, in his destruction, fixed an example, to which, in turn, the most lordly were taught to bow. And thus, Congress selected a distant and feeble territory, whose murmurs could be but indistinctly heard, just over

the verge of heaven; and, in the sacrifice of its rights, and prostration of its authority, established a precedent that *saps the foundation* of State authority; and produces consolidation, or, in the end, disunion.

Mr. Scott remarked, that he had much more to say, but, from indisposition and exhaustion, was unable to proceed; the committee were also fatigued; the question of expedience, and other topics, he had left entirely untouched; but, from the laboured and able investigation the subject had received, he was willing to trust the rights, the happiness, the fate of Missouri, with the House. Her present prosperity and future greatness depended on the decision: if gentlemen could take the power, he entreated them not to exercise it; the affections of the people of Missouri had been put to many severe trials, in the course of eighteen years, but they could not endure for ever; and he appealed to gentlemen's unquestionabled knowledge of right, and native love of justice, not to add this restriction to the list of greivances of that people.

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